SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1066

CITY OF PHOENIX, ARIZONA, et al,

Appellant,

versus

EMILY KOLODZIEJSKI,

Appellee.

On Appeal from the United States District Court for the District of Arizona

BRIEF FOR LOUISIANA SCHOOL BOARDS ASSOCIATION, AS AMICUS CURIAE

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INDEX

	Page
Interest of Amicus Curiae	1
Statement	2
Summary of Argument	4
Argument	5
Conclusion	13
Certificate	15

TABLE OF CASES

Frank T. Stewart, et al v. The Parish School Board of the Parish of St. Charles, et al, Civil Action No. 69-2818, United States District Court, Eastern District of Louisiana, decided February 25, 1970, presently on appeal to United States Supreme Court 3, 7, 11, 12

Kramer v. Union Free School District, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 ..... 8, 9, 11, 12

Cipriano v. City of Houma, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647 ..... 8, 9, 11, 12

Wesberry v. Sanders, 376 U.S. 1 (1964) 8, 9

Reynolds v. Sims, 377 U.S. 533 (1964) 8, 9

Page

Hadley, et al v. The Junior College District of Metropolitan Kansas City, Missouri, et al, decided by United States Supreme Court February 25, 1970 9

Avery v. Midland County, 390 U.S. 474 (1968) 9, 10

Levy v. Louisiana, 391 U.S. 68 (1968) 10

McGowan v. Maryland, 366 U.S. 420, 425 (1960) 10

Kotch v. Board of River Port Pilot Comm'rs., 330 U.S. 552, 556 (1946) 10

Williams v. Rhodes, 393 U.S. 23, 30 (1968) 10

Linkletter v. Walker, 381 U.S. 618 (1965) 11

CONSTITUTION OF LOUISIANA

Article XII, Section 15 1

Article XIV, Section 14(a) 2

Article IX, Section 10 2

CONSTITUTION OF UNITED STATES

Fourteenth Amendment to the Constitution of the United States 9, 13

MISCELLANEOUS

Rule 29 of the Federal Rules of Appellate Procedure 3

A. Sutherland, *Constitutionalism in America* 508 (1965).. 10

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BRIEF FOR LOUISIANA SCHOOL BOARDS ASSOCIATION, AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE

May It Please the Court:

The State constitutional property school tax embodied in Section 15 of Article XII of the Louisiana State Constitution, representing at the present time the State's contribution,

comprises a very small percentage of the total sum presently required in providing quality education in the State. At least 75% or more of essential funds are collected under the ad valorem or property bond laws of the State embodied in Article XIV, Section 14(a) of the State Constitution, supplemented by Section 10 of Article IX, the latter also in respect to the voting of property taxes for maintenance and operation and additional capital improvements.

The property-owning citizens of Louisiana have consistently supported their local school systems in their communities by providing the capital improvement revenues needed to build, equip, and maintain rapidly expanding facilities and, also, to provide teachers' pay, and other maintenance and operation as well as incidental capital improvement purposes.

Since 1898, the burden of providing this money, pretermitting limited Federal funds of recent years, has been placed upon the shoulders of the property-owning taxpayers, and the record of sixty-six local public school systems in the State will show clearly that the property-owning taxpayers have willingly shouldered this burden.

It is because of this history of responsible support for public education by these property-owning taxpayers that the Louisiana School Boards Association is interested in the issues involved in the present case, as is more fully stated below.

STATEMENT

Louisiana School Boards Association, a service organization whose membership is composed of representatives of

all sixty-six School Boards for the State of Louisiana, appearing as amicus curiae in the above-entitled case under Rule 43(3) of this Court, accepts the statement of issues embodied in the Stipulation of Fact relied upon by the Court below, as more fully explained in the brief filed by Appellee herein, and in the brief of the State of Louisiana, amicus curiae, filed herein.

Because of the urgency and limited time, and to avoid repetition, present amicus curiae adopts in full the position taken in the brief filed herein on behalf of the State of Louisiana both upon the merits of the case, and as to the equitable doctrine of prospectivity.

Present amicus curiae will emphasize the vital importance of Louisiana's property-owner, taxpayer qualifications in school bond and tax elections as these laws are or may hereafter be interpreted by this Court in the case of *Frank T. Stewart, et al v. The Parish School Board of the Parish of St. Charles, et al*, Civil Action No. 69-2818 on the docket of the United States District Court for the Eastern District of Louisiana,[1] decided on February 25, 1970, presently pending on appeal to this Court, as such issues may be adversely affected by any decree rendered herein invalidating the Arizona general obligation bond law.

Pretermitting the material differences between the Arizona law and the Louisiana law here under discussion, amicus curiae urges this Court to uphold the validity of the Arizona

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[1] See Exhibit "A," Louisiana State Amicus Curiae Brief for a complete copy of the Opinion in this case.

law which restricts the voting franchise in general obligation bond elections to property owners of real estate on the grounds that such persons constitute a class of voters who have a direct interest in and are primarily affected by the outcome of the election, and that the exclusion of non-property owners is necessary to promote a compelling state interest, which under our Republic Form of Government is essentially a matter reserved to the individual states for determination.

Further, in the alternative, amicus curiae urges that if the Court should affirm the decision of the lower Court, such decision be given prospective application only, fixing a cut-off date subsequent to a final decree of this Court following the equitable doctrine firmly established by this Court in recent cases.

SUMMARY

The summary of the argument is largely a repetition of the foregoing showing of interest on the part of amicus curiae.

Despite the differences in the law of Louisiana and the law of Arizona, as fully developed in the brief of the State of Louisiana, the School Boards of this State are supporting the validity of Arizona's bond election laws as fulfilling the constitutional requirements for the limiting of an election franchise.

Further, and in any event, this Court should apply the equitable doctrine of prospectivity to any decision the effect of which is to invalidate Arizona's limited franchise bond election laws.

ARGUMENT

(1) MERITS OF THE CASE.

PROPERTY TAXES IN LOUISIANA ARE SOLE SUPPORT OF CAPITAL IMPROVEMENT REVENUES FOR PUBLIC EDUCATION.

Every dollar of revenue for constructing, equipping and maintaining school buildings must originate from a local property tax election.

The Federal funds available for such purposes are limited insofar as capital improvements are concerned, and there is no provision in the Constitution and laws of the State providing these dollars in any other manner than as stated, under a system of law that was embodied in the Constitution of the State in 1898, and that has prevailed without legal interruption since its inception.

The school authorities of Louisiana are concerned that there is real danger of a property taxpayer revolt at what will be regarded as the unfairness of invalidating long-standing State constitutional and statutory provisions so as to now permit non-taxpayers to participate in such elections and to impose taxes on property-owning citizens. This denial of equal protection of the law presents the greatest danger to the vital financing of public education that has ever faced the public schools in Louisiana, and if sustained by this Court, the cornerstone of public school finance will be in large measure denied all of the sixty-six public school systems in the State for an indefinite time to come.

In this critical era, the problems of school integration,

over-population, health, crime, war, and urban dilemma make new solutions and new scientific theories, and in some instances, almost revolutionary social, economic and political changes necessary.

This Court is, of course, aware of the many Federal Court decisions and Federal Government actions of recent years, and even recent weeks, imposing upon public school systems new and rigid requirements with regard to the operation of public schools in Louisiana, and in other Southern states.

The Louisiana School Boards Association and its officers, directors, and delegates assembled in recent convention have reaffirmed that Louisiana cannot survive, much less progress, without a top-flight system of public education for all of the children of the State, white and black alike.

These Louisiana school authorities, from the State Superintendent of Education down, are dedicated to this purpose, to fulfill all constitutional requirements in this respect just as prescribed by the Federal Courts. To do so is demanding, and will continue to demand, a more rapidly expanding capital investment rather than the hopeless chaos and confusion that would result without the advantage of the present laws.

This new day in respect to which the Louisiana school system is making as much progress as any other in the South or elsewhere has, of course, to some considerable extent, as in all of the other states, aroused antagonism and hostility on the part of some of the property owners. Even so, and despite this fact, the majority has remained steadfast in their fidelity to preserve a total public school quality educational program, and has shown willingness to provide essential funds at the

local level through property tax elections even when all other sources of income have failed.

The Louisiana School Boards Association is concerned that any decision which invalidates our present property owner-qualifications for local property tax and bond elections so as to permit non-taxpayers to impose taxes on those citizens who will pay the bill will add impetus to that movement that could result in both constitutional and statutory amendments which will eliminate or reduce local property taxation as a source of revenue for local public school systems.

The Louisiana School Boards Association is convinced that each and every school system in the State of Louisiana should be encouraged with special emphasis at this time to improve its school system, and to maintain the quality of education offered therein whenever it can and by whatever legal methods may be available. This Association is convinced that nullification of present laws will have exactly the opposite effect.

There can be no doubt that every qualified elector has an interest in the content and conduct of public education in Louisiana and the other states. Much has been made of this point as to the "general interest of all qualified electors" in the public school system in the *St. Charles* case, supra, and largely became the basis for the Court's "across-the-board" decision in that case.

The argument that all qualified electors are interested or should be interested in the public schools is undeniable, and as to this, and fully commensurate with these rights the Constitution and law of Louisiana affords every qualified elector

the right to vote for all of the school board members and school officials, or is afforded an equal voice in voting for public school officials who may be invested under the law with the power to appoint.

That indeed was exactly what this Court was dealing with in *Kramer v. Union Free School District*, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 (no more, no less), where the Court recognized the validity of a school board member who might be appointed by a publicly elected city official, but affirmed the political right of a qualified elector to vote for a school board member where an election was required, despite the fact that under the state law he was denied this right, as he did not own a fee or a lessee right, directly or through a spouse, in taxable real estate, and was not a parent or guardian of a child enrolled for a specified time during the preceding year in a local school.

On the other hand, where the incurring of debt and the issuance of bonds for public purpose was involved, as in *Cipriano v. City of Houma*, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647, the issue was not the exercise of "one man, one vote" political suffrage, but rather depended upon rational and reasonable classification as would secure all qualified electors against invidious discrimination.

The distinction between the political right and the proprietary or governmental right is a well-defined line of demarcation that is not only plainly delineated in these two much misrepresented cases, but in the jurisprudence of this Court as far back as research may be pursued.

The incipiency of the idea of "one man, one vote" was initiated in *Wesberry v. Sanders*, 376 U.S. 1 (1964), and *Reyn-*

olds v. Sims, 377 U.S. 533 (1964). The recent case of *Hadley, et al v. The Junior College District of Metropolitan Kansas City, Missouri, et al*, decided by this Court on February 25, 1970, is the more recent exacting classification of all of the relevant cases. These cases were dealing with the political franchise of individual electors where public officials were to be elected, either where the direct right to vote was involved, as in *Kramer*, or where reapportionment to assure equality was required, as in *Wesberry*, *Reynolds*, *Hadley*, and other cases.

Cipriano, on the other hand, is plainly no more than an extension of a long line of decisions by this Court challenging and annuling under the Fourteenth Amendment a state statute where an unreasonable or discriminatory classification of rights is involved, and where there is thus a denial of Equal Protection of the Law.

In all of this, if you will, the compelling state interest and the exacting standard of precision actually enforced by this Court which would restrict or selectively distribute the franchise is to be emphasized, but only within the orbit of the rationale presented by the facts.

In multiple cases involving state taxation, and in multiple other cases involving the public fisc of the state this Court has permitted broad power to the states when it came to making reasonable classifications, and balking or drawing the line only where invidious discrimination against a particular class was involved. *Avery v. Midland County*, 390 U.S. 474 (1968).

The test has been aptly stated to be that a legislative

classification is invalid only ". . . if the classification rests on grounds wholly irrelevant to achievement of the State's objective." *Levy v. Louisiana*, 391 U.S. 68 (1968); Id. at 71; See also *Avery v. Midland County*, supra; *McGowan v. Maryland*, 366 U.S. 420, 425 (1960); *Kotch v. Board of River Port Pilot Comm'rs.*, 330 U.S. 552, 556 (1946); *Williams v. Rhodes*, 393 U.S. 23, 30 (1968).

As stated in *Williams v. Rhodes*, supra, ". . . we must consider the facts and circumstances of the law, the interests which the State claims to be protecting, and interests of those who are disadvantaged by the classification."

A. Sutherland, *Constitutionalism in America* 508 (1965), put it like this:

> "In all the cases emerges the basic proposition that a majority of the human beings concerned will determine their political and economic fate."

To apply this test in any practical, workable manner, it is submitted that in a case like the present only the qualified taxpaying electors who are directly affected by the election results are concerned.

If this is what the Constitution anticipates in protecting the qualified taxpaying elector, it necessarily means that those who are not directly affected must be excluded, and this is the compelling state interest.

(2) DOCTRINE OF PROSPECTIVITY.

In the event of a decree in this case invalidating the Arizona bonds, the doctrine of prospectivity fully developed

and emphasized in the brief of the State of Louisiana is of special significance to the school systems of Louisiana, for the reasons shown.

In the *Stewart* case, supra, Judge Minor Wisdom and his District Judge associates found the property bond law of Louisiana unconstitutional, and decreed the invalidity of the specific bonds involved where the suit had been timely filed within the sixty-day period provided under Art. 14, Section 14(n) of the State Constitution.

The Court nevertheless out of its own equity jurisdiction correctly applied the doctrine of prospectivity, relating it to the reasonable sixty-day Louisiana peremptive period by making its decision applicable to similar bonds only as to elections "held after the date this decision becomes final, and to those elections held prior to such date that are not challenged during the time specified by law for challenging the election."

Prospectivity in that case, as in the *Cipriano* case, supra, was justified under the Court's inherent equitable doctrine of hardship recognized by this Court in *Linkletter v. Walker*, 381 U.S. 618 (1965), and in other cases, as well as in the later case of *Cipriano*, supra.

Admittedly, the distinctions between the law of Louisiana and the law of Arizona, and the other vital distinctions as between the revenue law of Louisiana and the property law of Louisiana emphasize that what this Court is called upon to do in the event the present property bond laws are annulled, is to give close scrutiny to the laws of each state in preserving and protecting what is referred to in *Kramer* and *Cipriano*

as the "compelling state interest," justifying and requiring where a new situation is presented the application of the doctrine of "non-retroactivity" to any succeeding case where there is substantial distinction in the state law under consideration.

If equity is what is governing here, and if the conclusion of the Court is in any respect similar to the "across-the-board" decision rendered by Judge Wisdom in the *St. Charles* case, supra, it would hardly seem necessary to say that in any case that may hereafter come before this Court involving a state property bond the same equitable doctrine is to be applied, unless such bond is manifestly of a category of similar state bonds where the Court has previously found invidious discrimination.

This Court is thus to be called upon to examine the constitutional and statutory law of each of the states as to the right of state political subdivisions to incur debt and to issue bonds of one kind or another in providing the needs of the essential state purposes.

The very complexity of all of this in what must amount to the abandonment of the "broad" scope previously accorded states by this Court in respect to matters of this kind makes it even more imperative that the equitable doctrine of non-retroactivity is to be applied to each case where there is any substantial variation in the state law, as shown.

Under the doctrine of rational and reasonable classification of the *Cipriano* case, supra, the "primary" interest of the property owners here must be recognized and enforced as was expressly anticipated in both *Cipriano* and *Kramer*.

Finally, if one is to assume that this Court is to take over in a sense the supervision of all the laws of the state pertaining to taxes and fiscal policies, abandoning the broad principles heretofore reserved to the states in matters of this kind, the laws of each state are to be examined, and in insuring some degree of continuity to vital state functions as liberal principles of prospectivity are to be applied as is possible.

CONCLUSION

Present amicus curiae respectfully urges this Court to uphold the validity of the Arizona laws which restrict the voting franchise in general obligation bond elections of the kind here involved to property owners for the reason that such persons constitute a class of voters, and the only class of voters in the State, who are burdened with a lien securing the payment of the bonds in principal and interest, and who, thus, have a direct interest in and are primarily affected by the outcome of the election, and that the exclusion of non-property owners is necessary to promote a compelling state interest which under our Republican Form of Government is essentially local, governmental business that is reserved to the individual states for determination.

If the Court should affirm the decision of the lower Court, and in so doing invalidate the Arizona State laws as a violation of the provisions of the Fourteenth Amendment to the Federal Constitution, it is respectfully submitted that the Court should make it plain that the ambit of its ruling is restricted to the laws of that state, and in any event, the Court should give such decision prospective application only

following the equitable doctrine firmly established by this Court in recent cases.

Respectfully submitted,

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CERTIFICATE

I, the undersigned counsel for Amicus Curiae, Louisiana School Boards Association, do hereby certify that a copy of the foregoing brief has been served on all counsel in this matter by depositing a copy thereof in the United States Mail, postage prepaid, addressed to each of them at his respective address of record.

This _____ day of March, 1970.

_____